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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba BLACKWATER WORLDWIDE; Plaintiff, v. KELLY BROUGHTON, in his capacity as Director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive, Defendants.	Case No. 08 CV 0926 H (WMC) **SUPPLEMENTAL DECLARATION OF BRIAN BONFIGLIO IN SUPPORT OF PRELIMINARY INJUNCTION** Date: June 17, 2008 Time: 10:30 am Location: Courtroom of the Honorable Marilyn L. Huff [Plaintiff's Reply To Opposition To Preliminary Injunction And Declaration of Jennifer Chavez filed concurrently herewith.]

I, Brian Bonfiglio, declare as follows:

1. I am a Vice-President for Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater"). I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would competently testify thereto.

2. On June 5, 2008, the City of San Diego's City Auditor issued a document entitled, "Audit of Permits Issued for the Blackwater Facility." Attached as Exhibit 1 is a true and correct copy of this report.

3. The report was the result of a month-long process that began May 5, with the Mayor ordering his administration to examine everything having to do with Blackwater's Otay Mesa facility. As part of this process, I provided access to our facility to four of the City's auditors, including the City Auditor himself (Eduardo Luna) on May 13. I answered all their questions and provided with them all the documents they requested.

4. The City states in its reply that the ship mock-up at the facility will cover 80% of the warehouse floor space. The warehouse is over 61,000 square feet. The ship mock-up, which consists of three shipping containers welded together, is approximately 1200 square feet. Thus, it covers about 2% of the warehouse space.

5. The ship mock-up has always been described on plans submitted to the city as a "future use." The Navy has approved the mock-up and the facility "as safe for the training of Navy students," and has called the facility "an invaluable asset" to the Navy. Attached as Exhibit 2 is a true and correct copy of an e-mail from the Navy's Security Forces Safety Manager containing these statements.

6. Attached as Exhibit 3 is a true and correct copy of Volume I, Chapter 1 of the City of San Diego's Land Development Manual.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of June 2008 in San Diego, CA.

[signature]

BRIAN BONFIGLIO

28782077.2

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City of San Diego

AUDIT REPORT

AUDIT OF PERMITS ISSUED FOR THE BLACKWATER FACILITY

June 5, 2008

Internal Audit
Eduardo Luna, CIA, CGFM, Internal Auditor

EX. 1

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THE CITY OF SAN DIEGO

June 5, 2008

Jay M. Goldstone, Chief Operating Officer
City of San Diego
202 C Street
San Diego, CA 92101

Enclosed is our report regarding our audit of the permits granted for the Blackwater Worldwide facility located at 7685 Siempre Viva Road. Management's response to our audit report can be found as Attachment X. Internal Audit staff members that participated in the preparation of this report are Kyle Elser, Judy Zellers, and Tricia Mendenhall.

We would like to thank Development Services' and City Treasurers' staff, as well as Blackwater officials for their assistance and cooperation during this audit. All of their valuable time and efforts spent on providing us information is greatly appreciated.

Respectfully submitted,

Eduardo Luna
Internal Auditor

cc: Honorable Mayor Jerry Sanders
Honorable City Councilmembers
Michael Aguirre, City Attorney
William Anderson, Deputy Chief Operating Officer, Land Use & Economic Development
Kelly Broughton, Development Services Director

DIVERSITY
BRINGS US ALL TOGETHER

INTERNAL AUDIT
600 B STREET, SUITE 1440 • SAN DIEGO, CA 92101
PHONE 619 533-5214, FAX 619 533-5210

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INTRODUCTION

On May 5, 2008, Mayor Jerry Sanders directed the Chief Operating Officer to conduct an investigation into the permits issued to Blackwater USA for a facility in Otay Mesa. On May 6, 2008, the Chief Operating Officer requested the Internal Auditor to conduct an audit of the permits granted related to Blackwater's operations at 7685 Siempre Viva Road.

The audit objectives were to answer the following questions:

- Did Blackwater misrepresent its identity or intended use of the facility located at 7685 Siempre Viva Road, Otay Mesa Development District?
- Did Development Services' staff properly issue permits in compliance with codes and regulations for the Blackwater facility?
- Is the designation of Vocational / Trade School appropriate for the Otay Mesa site?

A detailed Audit Objectives, Scope and Methodology section is presented in Attachment I. A detailed timeline of events in presented in Attachment II.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

BACKGROUND

Blackwater Worldwide (Blackwater)

Blackwater, formerly Blackwater USA, is a security services corporation that provides a multitude of security-related services, such as law enforcement training to government entities. Blackwater has plans to operate a training center in the City of San Diego to train U.S. Navy personnel. Blackwater obtained a contract with the U.S. Navy to provide security training to Navy personnel, including the fundamentals of watch standing and the use of weapons. According to a Blackwater official, Blackwater has provided this type of training to approximately 2,500 Navy personnel in the San Diego area. A Blackwater official indicated that in the past, this training was provided at American Shooting Center, located at 5590 Ruffin Road, San Diego. However, according to the Blackwater official, a more realistic training site was needed to address the U.S. Navy training needs.

In August 2007, E&J Holdings, a sister entity to Blackwater, leased a 61,599 square foot warehouse located at 7685 Siempre Viva Road in the Otay Mesa Development District of San Diego (zip code 95154). Safchild Investments LLC owns the warehouse, which originally was completed in 2003 and occupied for a period by Hometex, Inc., a towel manufacturing company. The map that follows shows the location of the facility.

Location of 7685 Siempre Viva Road, San Diego, CA

Britannia Boulevard
Siempre Viva Road
7685 Siempre Viva Rd, San Diego, CA 921
Bristow Court
Martinez Ranch Road
Britannia Court
And Linea Divisoria Internacional
Google

Source: Google.

In order to provide security training at the warehouse, Blackwater needed to modify the facility, including adding interior walls, installing air conditioning and exhaust systems, installing an indoor firing range, and constructing a shipboard simulator. A Blackwater official stated that they planned to begin training at this site in June 2008.

Development Services Department

The Development Services Department (DSD) is a Division of City Planning and Development, reporting to the Chief Operating Officer of the City. DSD provides review, permit issuance, inspection, and code enforcement services for building and development projects throughout the City of San Diego.

In the City of San Diego, the Land Development Code establishes the City's planning, zoning, sub-division, and building regulations as documented in Chapters 11 to 15 of the Municipal Code. The City of San Diego has adopted several codes, among them the Uniform Building, Mechanical and Plumbing, and National Electrical codes. In addition, there are federal, state and local laws that govern construction, such as those covering energy conservation. Reviewing and issuing building permits is a complex process requiring multiple disciplines to review the Municipal Code, zoning use, and plans prior to permit approval and issuance. Contractors can begin work on projects once a permit for that work has been issued. Several permits may be required for one project. Once the contractor completes the work, the City inspects the project for compliance with the approved plans. In the prior three fiscal years, Development Services staff has issued approximately 29,400 permits.

Did Blackwater Misrepresent Their Identity or Intended Use of the Facility?

Allegations were made that Blackwater potentially used misleading names, such as Southwestern Law Enforcement to inappropriately disguise their identity or hide the intended use of the facility. We reviewed the building permit and business tax certificate applications that were filed for the Blackwater facility. Based on this review, we determined that Blackwater did not misrepresent their identity. Regarding the use of the facility, it was inconclusive if two of the applications submitted for the use of the facility were intentionally misrepresented or an oversight.

Identity Recorded on Permit Applications

In the City of San Diego, building permit applications do not require the name of the business owner. According to the DSD Director, building permit approval is not based on the applicant or owner name. Building permits are issued if the facility changes are permissible under the Municipal Code. The Municipal Code Section 112.0102 permits either an owner, an agent of the owner, or a party with a legal interest to be named on the permit application.

We found that building contractors submitted and signed all four applications for tenant improvements submitted for the subject property. Blackwater did not complete, sign, or file any of the building permit applications, nor were they required to do so. As shown on the next page, Noble Construction signed two of the applications; Rowen Electric completed one application, as did TSA Contracting.

Use Listed on Permit Applications

We found that Blackwater's contractor Noble Construction incorrectly listed the use of the facility on the permit application as "Warehouse with offices," and their contractor Rowen Electric incorrectly left the "use" question blank on a permit application. However, there were two other permit applications completed near the same time period that did indicate the use was for "Training." We could not determine if the incorrect or missing information on the applications for projects 138862 and 140766 was intentionally misrepresented or an oversight.

Building Permit Applications Associated With 7685 Siempre Viva Road

Project Number	Application Date	Property Owner/Lessee Tenant Name	Property Owner or Lessee / Tenant	Applicant	Project Description	Proposed Use
138862	9/5/07	Southwest Law Enforcement Training Enterprises	Lessee / Tenant	Noble Construction Consultants	44 feet of Partitions in existing office space	Warehouse with offices
140766	10/1/07	Blank	Blank	Noble Construction Consultants	Install air conditioning and exhaust	Training
140766	2/7/08	Safchild Investments LLC	Property Owner	Rowen Electric	Electrical tenant improvement	Blank
150059	2/7/08	Raven Development Group	Lessee / Tenant	TSA Contracting Inc.	Add indoor firing range	Training facility

Source: Development Services Department.

We should also note that the building plans associated with project number 138862 identified the project title as, "Southwest Law Enforcement Training Enterprises." According to a Blackwater official, Blackwater was originally planning to use Southwest Law Enforcement as a sub-contractor to its predecessor American Shooting Center. According to the Blackwater official they were unable to come to terms with Southwest Law Enforcement Training Enterprises, so they decided to proceed with the project without them.

Recommendation:

1. DSD should ensure permits are not approved unless the permit application includes all required information (i.e. "Property Owner or Lessee Tenant" and "Proposed Use"). Applicants should not be allowed to leave sections of the application blank.

Business Tax Certificate

All businesses operating in the City of San Diego are required to obtain a business tax certificate. On their business tax certificate application, as shown on the following page, Blackwater indicated its primary business activity at the facility would be security training for the U.S. Navy, specifically to conduct a course called, "Ship Reactionary Force Basic" (SRF-B).[1] The business tax certificate application was dated February 6, 2008. Based on this we determined that Blackwater did not misrepresent their identity. In our opinion, the business tax certificate application is direct evidence that Blackwater represented to the City their intent to operate a training facility at the address.

Blackwater City of San Diego Business Tax Application

CITY OF SAN DIEGO California
OFFICE OF THE CITY TREASURER
BUSINESS TAX PROGRAM
PO BOX 122289
SAN DIEGO CA 92112-2289
(619) 615-1500 8:00 a.m.-5:00 p.m. M-F
www.sandiego.gov

Ck 185

Certificate/Account Number: 2008009303

Business Tax Application

Sole Proprietorship / Husband & Wife Sole / Partnership / Limited Partnership / [X] Limited Liability Company / Corporation / S-Corporation / Trust / Non-Profit Org.

Business Name (DBA): ~~BLACKWATER WEST, L.L.C.~~ Blackwater Lodge + Training Center Inc

Business Owner Name (individual/partnership/corporate name): ~~BLACKWATER WEST, L.L.C.~~ same

Business Telephone and Address Information

Do not publish our business information on the new business or active business listings.

Home-Based Business?

Business Telephone Number: ([redacted]) [redacted]

Fax Telephone Number: ([redacted]) [redacted]

E-Mail Address (e.g. JohnDoe@company.com): [redacted]

Business Address: 7685 Siempre Viva

Suite:

Post Office Box Number:

Personal Mail Box (PMB):

City: San Diego

State: CA

Zip Code: 92154

Country:

Mailing Telephone and Address Information

[X] Same as Business Address?

Mailing Telephone Number:

To The Attention of:

Mailing Address:

Suite:

Post Office Box Number:

Personal Mail Box (PMB):

City:

State:

Zip Code:

Country:

Business Activity

Business Start Date in San Diego for this Location (MM/DD/YYYY): January 1, 2008

Number of Employees: 15

Number of Units:

Federal Employer Identification Number (FEIN):

Seller's Permit Number (SEAN):

Do You or Will You Sell Cigarettes, Tobacco Products or Smoking Paraphernalia? Yes No

Business Activity Types:

Agriculture (11)
Mining (21)
Utilities (22)
Construction (23)
Manufacturing (31-33)
Wholesale (42)
Retail (44-45)
Transportation and Warehousing (48-49)
Information Services (51)
Finance and Insurance (52)
Real Estate/Rental/Leasing (53)
Professional/Scientific/Technical (54)
Management Service (55)
Administrative and Support (56)
Educational Services (61)
Health Care/Social Assistance (62)
Arts/Entertainment/Recreation (71)
Accommodation/Foodservices (72)
Other Services (81)
Public Administration (92)

DETAILED DESCRIPTION IS MANDATORY.

Describe Primary Business Activity in Detail: Blackwater will conduct security training for the United States Navy

Primary Activity Code: 61 1699

Describe Additional Business Activity in Detail: Blackwater has contracted with the United States Navy to conduct a course called "Ship Reactionary Force Basic" (SRF-B)

Secondary Activity Code: 61 171

Source: City of San Diego.

[1] A description and the content of this course is available on the internet at www.fbodaily.com/archive/2008/04-April/11-Apr-2008/FBO-01550258.htm.

Did Development Services' Staff Properly Issue Permits for 7685 Siempre Viva Road?

Questions have been raised whether DSD properly issued permits for the Blackwater facility. We reviewed the Municipal Code, the City Attorney's opinion, and interviewed DSD staff, as well as Blackwater officials. Based on this review we determined that DSD staff had the authority under Municipal Code Section 111.0205 to classify Blackwater's use of the building as a vocational / trade school. Although the Municipal Code states that the subject matter taught at the vocational / trade school must be related to a use permitted within the Industrial Sub-district, the Municipal Code does not address whether the subject matter should be directly or indirectly related to the use.

Classification as Vocational / Trade School

DSD staff had the authority under the Municipal Code to classify Blackwater's use of the building as a vocational / trade school.

- Section 111.0205 states that the City, without a public hearing, is authorized to make a determination of the proper usage.[2]
- Section 131.0620(e) states that for any use that cannot be readily classified, the City Manager shall determine the appropriate use category and use subcategory upon request of the applicant or property owner.

In our opinion, based on this code language, DSD has the authority to classify the use of the facility as vocational / trade school. DSD classified the American Shooting Center, another shooting range located in the City, as a vocational / trade school. Vocational / trade school, a permitted use, may be approved or denied by staff in accordance with a process one review. Process one applies to construction permits including Building Permits, Electrical Permits,

[2] SDMC 111.0205 states the City Manager may designate a staff member to make an impartial decision, without a public hearing, on a permit, map or other matter in accordance with the decision making procedures of the Land Development Code.

Plumbing or Mechanical Permits, Demolition/Removal Permits, Grading Permits, Public Right-of-Way Permits, and Sign Permits.[3]

However, the Municipal Code states that instruction at the vocational / trade schools should be related to a use permitted in the Otay Mesa Development District (OMDD).[4] We reviewed the following communications pertaining to how the use related to other industries in the industrial zone:

- The Development Service Director's memo dated April 24, 2008 (Attachment III)
- Email from Development Services Senior Planner dated May 12, 2008 (Attachment IV)
- The City Attorney's Memo dated May 16, 2008 (Attachment V)
- Blackwater's Letter to Mr. Luna dated May 16, 2008 (Attachment VI)
- Blackwater's Letter to Mayor Jerry Sanders dated May 19, 2008 (Attachment VII)

The Municipal Code states that instruction at the vocational / trade schools should be related to a use permitted in the Otay Mesa Development District (OMDD). However, the Municipal Code does not state if the subject taught should be directly or indirectly related to a permitted use. Further, the Municipal Code does not indicate how security training should be classified. A DSD official informed us that:

> "The facility will be providing training for uses allowed in the zone. The project proposes security, law enforcement and/or military training. Security guard type uses would be classified as a business support use. Business support uses are permitted in the OMDD by SDMC 1517.0301(a)(7). There are many examples of security guards at other properties in Otay Mesa that have the same zoning designation. Law enforcement and military uses are classified within the government office use category. Government offices are permitted in the OMDD by SDMC 1517.0301(a)(1)."

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[3] SDMC 129.0102 and 129.0107.
[4] SDMC 1517.0301 lists the uses permitted within the Industrial Sub-district.

On the other hand, the City Attorney indicated that "neither a shooting range nor law enforcement/security training operation clearly qualify or fall within any of the permitted uses of the IH-1-1 or IH-2-1 zones."[5]

The complexity and lack of clarity for certain sections of the Municipal Code contribute to these differing interpretations. In our opinion, the City should develop a process for reviewing and approving projects that may be subject to interpretation or the Municipal Code may not clearly define the use. At a minimum, the process should include notifying the Chief Building Official of the project and requiring final sign-off. Further, the City should regulate the location of law enforcement or security training related facilities to facilitate future land-use decisions.

Recommendations:

2. The City's Chief Building Official and City Attorney should review the additional information provided in the attachments of this report to determine the correct course of action regarding the permits issued for the facility located at 7685 Siempre Viva Road.
3. DSD should implement a process for reviewing and approving projects that may be subject to interpretation or the Municipal Code may not clearly define the use.
4. The City should add regulations for law enforcement and security training facilities in the Municipal Code.

Additional Issues that Came to Our Attention During the Course of Our Audit

During our audit, we also reviewed and identified issues related to firearms, the Hazardous Materials Questionnaire, DSD's documentation retention, the Certificate of Occupancy, and a non-permitted structure.

Firearms

During our audit, we identified issues with the discharge of firearms at target or shooting ranges. We reviewed the Municipal Code for regulations pertaining to the firing of firearms within the City limits. Municipal Code section 53.10 states "It is the purpose and intent of the Council of

[5] SDMC 131.0604 states that IH-1-1 and IH-2-1 zones are Industrial Heavy zones. These zones are differentiated based on the uses allowed: IH-1-1 allows primarily manufacturing uses; IH-2-1 allows manufacturing uses with some office. The Blackwater facility is located in zone IH-2-1.

the City of San Diego that firing of firearms and other explosives within the city limits be strictly regulated for the protection of all persons and property located in the City." However, section (d) provides exceptions to this requirement. These exceptions include:

- Firearms fired under the authority of the United States or the State of California, and
- Shooting galleries or target ranges.

The City Attorney stated the shooting gallery exception listed above does not apply to the Blackwater facility because "this exception does not include vocational or trade schools."

However, this section of the Municipal Code is not related to the Land Development Code, which establishes the zoning use and building regulations for permits issued by DSD. In the City of San Diego, shooting galleries are regulated by the San Diego Police Department (SDPD).[6] The SDPD confirmed that a police permit was not required for Blackwater to operate as a firing range. It is the responsibility of Blackwater Officials to contact the SDPD (Permits and Licensing Unit) to ensure they are in compliance with all local police regulations.

Hazardous Materials Questionnaire

In addition to the permit application for the indoor firing range, a "Hazardous Materials Questionnaire" was also submitted. The permit applicant is to complete this questionnaire and the Fire Department staff reviews it during the Fire Plan check portion of DSD's plan approval process. Per the completed questionnaire, the applicant stated that the business will not "use, process, store or dispense" any "explosive or blasting agents."

The applicant signed the form on February 2, 2008, and a Fire Prevention Inspector completed the Fire Plan check on March 17, 2008. However, the Fire Plan check was only approved after the applicant was required to note on the plans the following: "The storage and use of small arms ammunition must be in accordance with the requirements of Chapter 33 of the 2007 California Fire Code."

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[6] SDMC 33.1601.

This section of the 2007 California Fire Code provides exceptions for possession, storage and use of small arms ammunition when packaged in accordance with Department of Transportation packaging requirements. We reviewed the plans and verified that the note was included.

Additionally, the Fire Prevention Supervisor indicated that there were no areas of concern regarding the completed "Hazardous Materials Questionnaire" submitted for the indoor firing range. He stated that the storage of ammunition is not uncommon as long as it was in compliance with the California Fire Code, and cited examples of vendors in the City of San Diego who stock ammunition for sale.

We also noted that according to a Blackwater official, 100 percent lead-free ammunition will be used at the facility.

Other Concerns

DSD could not provide the following requested documentation during our review:

- Original Certificate of Occupancy issued when building was completed in 2003.
- Original approved plans for the indoor firing range. (Only the resubmitted plans are on file.)
- Permit application for the construction of the ship simulator.

During our review, DSD staff could not locate certain requested records. Specifically, we requested the original approved plans for the indoor firing range (project 150059) and the Certificate of Occupancy for 7685 Siempre Viva Road. DSD staff advised that they could not locate these records. This raised concerns regarding DSD's internal controls over their records retention. We did not do any additional detailed testing to determine if controls over record retention are weak.

The Municipal Code states that no structure shall be used or occupied, and no change in the existing occupancy classification of a structure or portion of a structure shall be made until the

Building Official has issued a Certificate of Occupancy approving the use for occupancy[7]. DSD could not provide the original Certificate of Occupancy.

We should also note that a permit was not obtained for the construction of the ship simulator at the facility, even though it was shown on the plans as a future structure to be built. During a site visit of the facility, we took a photograph (Attachment VIII) of the structure and asked DSD if a permit was required to construct this structure. DSD Inspection Supervisor advised that a permit is required and they have notified the contractor.

Recommendations:

5. DSD should clarify whether a Certificate of Occupancy was issued for the building. If not, Development Services Code Enforcement should not allow any part of the building to be occupied until the certificate is issued.
6. DSD should notify Blackwater in writing that training may not be conducted in any areas for which City permits have not been issued.
7. DSD should determine the appropriate actions to be taken regarding the ship simulator structure that was built without an approved permit.
8. DSD should take additional steps to locate missing records and review controls over records retention to ensure they are adequate.

[7] SDMC 129.0113 (a).

Attachment I

Audit Objectives, Scope, and Methodology

The scope and objectives of our audit were to determine if 1) Blackwater misrepresented its identity or intended use of the facility located at 7685 Siempre Viva Road, Otay Mesa Development District; 2) Development Services was in compliance with codes and regulations in issuing the permits for the Blackwater facility; and 3) the designation of vocational / trade school for the Otay Mesa site was appropriate.

The following audit procedures were used to achieve the audit objectives:

- Reviewed Development Services' on-line procedures available to the public for obtaining building permits.
- Reviewed the Municipal Code regulations related to firearms, permit issuance and project development for the Otay Mesa Development District, Industrial Sub-district.
- Contacted the San Diego Police Department to obtain information related to permit requirement for operating a firing range within the City of San Diego.
- Performed a site visit of the facility located at 7685 Siempre Viva Road.
- Interviewed Development Services, City Treasurer's and Blackwater Worldwide staff.
- Reviewed permit applications, project plans, print outs from Development Services' Project Tracking System, and Business Tax Certificate information related to the facility located at 7685 Siempre Viva Road.
- Met with City Attorney staff to discuss legal issues and they advised they are doing their own investigation and will be issuing a separate report.

We evaluated specific internal controls related to the audit objectives. Our review focused on the controls related to the issuance of specific permits for the facility located at 7685 Siempre Viva Road. We did not perform in depth testing of the overall effectiveness of the internal controls related to Development Services permitting process. Our conclusions on the effectiveness of the controls related to the particular permits that we reviewed are detailed in our audit report.

Attachment II

Timeline of Events Regarding Permits Issued for the Blackwater Facility

Date	Event	Source
8/14/2001	Application submitted by Master Development Corp. for "New Industrial Building" located at 7685 Siempre Viva Road. Total square feet of facility per submitted plans is 61,599.	Copy of Application and submitted plans
9/5/2007	Application for tenant improvements submitted by Noble Construction Consultants, Inc. for "44 feet of new partition walls in existing office space" in facility located at 7685 Siempre Viva Road. Existing use listed as "Warehouse with offices". Proposed use listed as "Same (No Change)". Development Services Department (DSD) Project number - 138862	Copy of Application
9/5/2007	Hazardous Materials Questionnaire completed for project number 138862 by Noble Construction Consultants, Inc. Questionnaire notes no hazardous materials.	Copy of Hazardous Materials Questionnaire
9/6/2007	DSD issues building permit for project number 138862.	Project Status Report from Project Tracking System (PTS)
10/1/2007	Application for the installation of AC and exhaust submitted by Nobel Construction Consultants in the facility located at 7685 Siempre Viva Road. Existing use listed as "warehouse". Proposed use listed as "Training". DSD Project number - 140766	Copy of Application
10/1/2007	DSD issues mechanical permit for project number 140766.	Project Status Report from PTS
2/7/2008	Application for electrical work submitted by Rowan Electric for "Electrical T.I." in facility located at 7685 Siempre Viva Road. No change in use per application. DSD Project number - 140766	Copy of Application

Attachment II

Timeline of Events Regarding Permits Issued for the Blackwater Facility

Date	Event	Source
2/7/2008	Application for construction permit submitted by TSA Contracting Inc. for "Add indoor firing range" in facility located at 7685 Siempre Viva Road. Change in use noted from "Warehouse" to "Training Facility" with a total floor area of 5,000 square feet. DSD Project number – 150059	Copy of Application
2/7/2008	Hazardous Materials Questionnaire completed for project number 150059 by TSA Contracting Inc. Questionnaire notes no hazardous materials.	Copy of Hazardous Materials Questionnaire
2/8/2008	DSD issues electrical permit for project number 140766.	Project Status Report from PTS
3/17/2008	Fire Plan Check completed with issues cleared for project number 150059. Applicant to provide note on plans "The storage and use of small arms ammunition must be in accordance with the requirements of Chapter 33 of the 2007 California Fire Code."	Project Issues - Cycle 11 from PTS
3/19/2008	DSD issues building permit for project number 150059.	Project Status Report from PTS
3/28/2008	Business Tax Account created in business Treasurers' Tax Collection System (TTCS) for Blackwater Lodge & Training Center, Inc. with business address of 7685 Siempre Viva Road. Application signed by Vice President on 2/6/08. Primary business activity per the Business Tax application is "Blackwater will conduct security training for the United States Navy".	Screen Prints from TTCS and copy of Business Tax Application
4/7/2008	DSD issues mechanical permit for project number 150059.	Project Status Report from PTS
4/9/2008	DSD approves zoning clearance for Business Tax License for Blackwater Lodge & Training Center, Inc. at 7685 Siempre Viva Road.	Screen Prints from TTCS

Attachment III

THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

MEMORANDUM

Date: April 24, 2008

To: Jay Goldstone, Chief Operating Officer

From: Kelly Broughton, Development Services Director

Subject: Building Improvements
7685 Siempre Viva Road

Per your request, I have prepared this summary of work proposed and the current status of the project located at the above address.

The project site has an existing industrial warehouse building built as part of Britannia Corporate Center. The current structure was permitted August 14, 2001 and was completed March 26, 2003. The property is zoned as Otay Mesa Development District – Industrial Subdistrict. This zone allows heavy industrial uses by right such as heavy manufacturing, light manufacturing, research & development, trucking & transportation terminals, as well as heavy commercial and other compatible uses. The uses permitted in this zone were approved by City Council on December 9, 1997 and made effective on January 1, 2000.

Construction permits that are either in process or recently completed for this property were applied for as tenant improvements/building permits and include the construction of partition walls, mechanical systems, electrical work, and a modular structure to be placed inside the existing industrial structure. These permits were applied for by agents for the lessee/tenant (Raven Development Group) between September 9, 2007 and February 7, 2008. The last permit was issued on March 19, 2008 and work is still being inspected.

Based on the plans submitted to date, there are a small number of rooms shown to be used for training purposes. In addition to the heavy industrial and commercial uses, vocational/trade schools are permitted in the Otay Mesa Development District Zone. Training for any vocation or trade including training for security work would, therefore, be allowed by right. Once final inspections are complete the rooms identified on the approved plans could be occupied for training purposes. The plans that have been

Attachment III

submitted to the department too date refer to the remaining portion of this industrial building as being used for warehouse purposes. If the project applicant wanted to use this remaining area for uses other than warehousing, such as training, they would need to submit another set of construction plans for our review. This is required because other uses could have different exiting, fire/life safety, parking impacts, etc. that would need to be reviewed by Development Services Department staff before these areas could be occupied.

We will continue to monitor this proposed project and insure compliance with all applicable Municipal and Building Codes.

Kelly Broughton
Development Services Director

KGB/lgb

Attachment IV

From: Larson, Chris
Sent: Monday, May 12, 2008 4:16 PM
To: Zellers, Judy
Cc: Elser, Kyle; Mendenhall, Tricia; Kwan, Willie

Hello, I am following-up on your question concerning SDMC 1517.0301(a)(8). Only training for uses that are permitted in the zone are allowed. Even though SDMC 1517.0301(a)(1) states that all uses permitted in the IH-2-1 zone are allowed the restriction on training for only those uses allowed in the zone is still a requirement because SDMC 1517.0103 states that when there is a conflict between the Land Development Code (Chapters 11-14 of the SDMC) and the Otay Mesa Development District (OMDD) the OMDD applies. However, the facility will be providing training for uses allowed in the zone. The project proposes security, law enforcement and/or military training. Security guard type uses would be classified as a business support use. Business support uses are permitted in the OMDD by SDMC 1517.0301(a)(7). There are many examples of security guards at other properties in Otay Mesa that have the same zoning designation. Law enforcement and military uses are classified within the government office use category. Government offices are permitted in the OMDD by SDMC 1517.0301(a)(1). An example of a government law enforcement facility at a property that shares the same zoning designation is the Border Patrol facility located at 6651 Gateway Park Drive. The Border Patrol facility obtained a Site Development Permit to allow for an over-height fence, a Conditional Use Permit to allow for dog kennels, and grading and building permits from the City. As a part of the review for the many permits that were issued to the Border Patrol the City did determine that the Border Patrol use is allowed in the zone. Please let me know if there is anything else that you need. Thanks, Chris

Attachment V

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: May 16, 2008

TO: Honorable Mayor and Members of the City Council

FROM: City Attorney

SUBJECT: 7685 Siempre Viva Road, Blackwater Law Enforcement/Security Operations in Otay Mesa

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INTRODUCTION

On or about May 5, 2008, Mayor Sanders requested an investigation concerning the issuance of permits by the City for the use and construction of a training facility operated at 7685 Siempre Viva Road, in Otay Mesa, by an entity commonly known as Blackwater. On May 1, 2008, the Honorable Congressman Bob Filner requested a similar investigation. In response to these requests, the City Attorney's office conducted a legal analysis of the process used to issue the permits and the mechanisms available to Blackwater for compliance with the law.

BACKGROUND

On or about September 5, 2007, an entity operating under the project name "Southwest Law Enforcement Training Enterprise," filed a general application with the City of San Diego's Development Services Department [DSD] to conduct "Tenant Improvements" at 7685 Siempre Viva Road located within the Otay Mesa Development District. The existing use identified on the application was warehouse with offices. The proposed use identified on the application was identified as "same (no change)." The purpose of the application was to construct 44 feet of new partitions in existing office space. Accompanying the application was a signed Hazardous Materials Questionnaire where the applicant disclosed that there were no uses of explosives or blasting agents or other health hazards associated with the activity.

On or about February 7, 2008, another general application was submitted to the City of San Diego's DSD to conduct electrical work at the 7685 Siempre Viva Road site for a project entitled

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"South West Police." The scope of the work included the installation of two new AC units and six exhaust fans.

On or about February 7, 2008, a separate General Application was also submitted to DSD for structural work for this same site. The project description on the application was to "[a]dd [an] indoor firing range." The identified proposed use on the application was for a training facility. The existing use was identified on the application as warehouse use and the project title was now "Southwest Law Enforcement." The Lessee or Tenant was identified on this application as "Raven Development Group" with an address in North Carolina. However, the September 5, 2007 application had identified the Lessee or Tenant as "Southwest Law Enforcement Training Enterprises" with an address in San Diego. The Hazardous Materials Questionnaire dated February 7, 2008 for the construction of the firing range did not identify any uses of explosives or blasting agents or other health hazards associated with this operation.

QUESTIONS PRESENTED

1. May the project applicant operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals?

2. What processes and approvals must be followed in order for the project applicant to operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District?

SHORT ANSWERS

1. No. The project applicant may not operate a law enforcement/security training facility within an Industrial Subdistrict of the Otay Mesa Development District with only ministerial processing and approvals.

2. The project applicant may operate such a facility within an Industrial Subdistrict of the Otay Mesa Development District after the City has complied with the requirements of the California Environmental Quality Act [CEQA] and after the City of San Diego's Planning Commission through a Process Four Hearing has authorized such use, pursuant to Section 1517.0301(c)(2) of the San Diego Municipal Code [SDMC]. However, if the project applicant intends to use firearms as part of the training conducted at this same training facility, the project applicant should also obtain permission from the City Council pursuant to SDMC Section 53.10(e) and (f). Furthermore, to be consistent with the purpose and intent of SDMC Section 112.0103, the highest decisionmaking body should hear all discretionary actions together; therefore, both the underlying approval of the use of the site for a law enforcement/security training facility should be made by the City Council in conjunction with the decision to allow the use of firearms on-site.

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ANALYSIS

The legal authority of the City of San Diego to regulate the use of land for training facilities and firearm use falls squarely within the City's police powers. Exercising this authority, the City of San Diego strictly limits how and when firearms may be used within the City. Specifically, Section 53.10(a) states, "It is the purpose and intent of the Council of the City of San Diego that the firing of firearms and other explosives within the city limits be strictly regulated for the protection of all persons and property located in the City." With the exception of shooting galleries or target ranges (note: this exception does not include vocational or trade schools) and government authorized use, no firing of firearms is allowed without City Council approval by resolution. *See* SDMC Section 53.10(d) and (e). Approval by City Council is a discretionary act and will trigger the need to comply with CEQA. In addition, as explained in more detail below, the underlying zone and use restrictions may also limit where shooting ranges may be allowed.

7685 Siempre Viva Road is located in the IH-2-1 zone of the Otay Mesa Industrial Subdistrict within the Otay Mesa Development District. As stated in SDMC Section 131.0604(a), the purpose of the IH (Industrial—Heavy) zone

> is to provide space for land-intensive industrial activities emphasizing base-sector manufacturing. The IH zones are intended to promote efficient industrial land use with minimal development standards, while providing proper safeguards for adjoining properties and the community in general. It is the intent of these zones to limit the presence of nonindustrial uses in order to preserve land that is appropriate for large-scale industrial users.

The IH-1-1 zone allows primarily manufacturing uses and the IH-2-1 zone allows manufacturing uses with some office use. *See* SDMC Section 131.0604(b). Neither a shooting range nor a law enforcement/security training operation clearly qualify or fall within any of the permitted uses of the IH-1-1 or IH-2-1 zones. Table 131.06B of Section 131.0622, however, does permit vocational/trade schools in the IH-2-1 zone and SDMC Section 1517.0301(a)(1) cross-references Table 131.06B as applicable within the Otay Mesa Industrial Subdistrict. However, as of the date of this memo, no available information indicates clearly that the law enforcement/security training facility, as proposed by the applicant, would qualify as a vocational or trade school. In addition, SDMC Section 1517.0301(a)(8)(A) further restricts trade schools within the Otay Mesa Industrial Subdistrict to those "trade schools instructing in subjects related to a use permitted within the Industrial Subdistrict." However, SDMC Section 1517.0301(c)(1) and (2) states other uses not otherwise identified are permitted under the following circumstances:

> (1) Accessory uses for any of the foregoing permitted uses including signs. As specified in Land Development Code Chapter 14, Article 2, Division 12 (Sign Regulations), for sign

Attachment V

regulatory purposes this Otay Mesa Development District shall be deemed to be an industrial zone.[1]

(2) Any other uses which the Planning Commission finds, in accordance with Process Four, to be similar in character to the uses enumerated in the Otay Mesa Development District Ordinance and which are clearly within the intent and purpose of the Otay Mesa Development District. The adopted resolution embodying any such finding shall be filed in the office of the City Clerk.

Given the type of operation proposed, Planning Commission approval pursuant to Section 1517.0301(c)(2) is appropriate here.[2] Planning Commission review is a discretionary act and will trigger the requirements of CEQA.[3]

Since the use of firearms at the site will trigger City Council approval, it would be appropriate under these circumstances for the City Council to determine the whole of the action; namely, whether to authorize the use of 7685 Siempre Viva Road as a law enforcement/security training facility where firearms will be used. This would be consistent with SDMC Section 112.0103.[4]

With respect to the CEQA analysis, at a minimum, potential environmental impacts should be analyzed, including noise impacts, potential for discharges into the storm drain, accidental explosion or release of hazardous substances (e.g., lead discharge), fire hazards and impacts on fire protection services, other safety concerns due to the firing of guns and potential adverse effects due to traffic, such as traffic congestion. To the extent these impacts are determined to be significant, then they should be mitigated and the mitigation documented in a Mitigated Negative Declaration. Mitigation may include, but is not limited to, the following:

- The facility be constructed with impenetrable walls, adequate ventilation and lighting systems for a shooting range, and acoustical treatment for sound attenuation suitable for a firing range;

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[1] The training facility does not fall into the category of "accessory use" as defined in Section 113.0103.

[2] SDMC Section 131.0110(a) gives some discretion to the City Manager to determine the appropriate use category; however, this discretion does not authorize arbitrary determinations. In fact, SDMC Section 131.0110(c) allows for an amendment to the Use Regulations Table where a use category or subcategory cannot be determined. Any amendment will require City Council approval. Planning Commission review under Section 1517.0301(c)(2) provides another means for determining appropriate use, in order to avoid the problem of having to fit a square peg into a round hole.

[3] Even if this operation were only characterized as a shooting range and not a training facility, a shooting range is not a use authorized within this zone and would also trigger the need for Planning Commission review, regardless of the applicability of SDMC Section 53.10. *See also* SDMC Sections 131.0620(a), 131.0630(a) and 1517.0301(a).

[4] SDMC Section 112.0103 states: "When an applicant applies for more than one permit, map, or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development as set forth in Section 111.1015. The findings required for approval of each permit shall be considered individually, consistent with Section 126.0105."

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- The facility be operated in a manner that minimizes the possibility of a release of hazardous waste and/or hazardous waste constituents (e.g., fine powders of range lead); The facility collect, manage, and dispose of all unreacted gun powders and residues properly as hazardous waste;

- The facility label each container of hazardous waste generated on-site; and,

- The facility complete a Hazardous Waste Manifest for all hazardous wastes generated on-site, and use a registered hazardous waste transporter to transport hazardous wastes off-site to an authorized facility.

CONCLUSION

Because construction permits and other approvals were issued before discretionary approval of the underlying use had been obtained, a stop work order should be issued. The applicant should be required to submit a new application for discretionary approval in order to use the site as a law enforcement/security training facility where firearms will be used.[5] In addition, no Certificate of Occupancy under SDMC Section 129.0114 should be issued until all discretionary approvals have been obtained, including compliance with CEQA. If a Certificate of Occupancy has already been issued in error, then proceedings to suspend or revoke the Certificate should be initiated pursuant to SDMC Section 129.0118. This Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate.

MICHAEL J. AGUIRRE,
City Attorney

MJA:SRE:pev

[5] SDMC Section 129.0108 states, "After all required approvals, including any required *development permits*, have been obtained and all required fees have been paid, the Building Official may issue a *construction permit*. Construction shall not begin until the required permits have been issued." Section 129.0105(a) further states, "If a proposed *development* requires one or more *development permits*, the required *development permits* must be issued before an application is submitted for a *construction permit* except as provided in Section 129.0105(c)."

Attachment VI

16 May 2008

Mr. Eduardo Luna
Internal Auditor
City of San Diego
600 "B" Street, Suite 1440
San Diego, CA 92101

Dear Mr. Luna:

It was my pleasure to give you and members of your staff a tour of our Otay Mesa location on May 13. We welcomed the opportunity to show representatives of the San Diego city government our state-of-the-art facility, which will provide vitally important training to members of our armed services. Toward the end of our meeting, your staff asked several questions regarding the facility. The purpose of this letter is to provide answers to those questions.

One of your staff's primary inquiries was how our training facility fits within the Otay Mesa Development District ("OMDD"). The statute creating the OMDD reads:

> The purpose of the [OMDD] Ordinance is to create and promote the development of the City's largest and potentially most significant industrial area. . . . It is intended that this District will provide for a full range of industrial uses . . . including . . . necessary support services. . . . It is also intended that the [OMDD] provide commercial use types necessary to support both the industrial area and the border crossing.[1]

Thus, from its very outset, the ordinance establishing the OMDD establishes several themes that should guide its application. First, the ordinance makes clear that attracting thriving industry to Otay Mesa is a major municipal priority. Moreover, the ordinance states plainly that the OMDD should contain a complete range of uses, industrial and commercial, including "support services."

Our Otay Mesa facility meets these objectives. As you know, Blackwater Worldwide is a defense contractor. The defense industry "continues to drive San Diego's economy."[2] And the city has welcomed other defense contractors into the OMDD.[3] We believe continuing to foster relationships between the city and the companies that support our armed forces is not only the right thing to do, but that it obeys the mandate of the OMDD ordinance to stimulate the location within the OMDD of flourishing and stable businesses and industries.

Moreover, the Blackwater Otay training facility can provide an important commercial use that will support other businesses in the area. Specifically, your staff inquired how Municipal Code section

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[1] San Diego Municipal Code § 1517.0101 (Otay Mesa Development District "Purpose and Intent").

[2] Marty Graham, *San Diego's Defense Industry Adapts To The Pentagon's Changing Needs*, SAN DIEGO METROPOLITAN UPTOWN EXAMINER AND DAILY BUSINESS REPORT, March 2006.

[3] For example, NGN Design & Manufacturing, located at "7560 Bristol Court, Suite A" (two building over from our facility). NGN manufactures realistic models of foreign military hardware. *See also* Mandy Jackson, *San Diego Industrial Market a Mix of Highs and Lows*, CALIFORNIA REAL ESTATE JOURNAL, Feb. 3, 2008 (noting that Otay Mesa has the highest vacancy rate in San Diego county, but that a trend is emerging of defense contractors putting to use vacant warehouse buildings).

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1517.0301(a)(8)(A) might apply to the facility. That section explicitly allows trade schools in the OMDD "instructing in subjects related to a use permitted within the Industrial Subdistrict."

As a threshold matter, as your staff noted in our meeting, Section 1517.0301 as a whole is somewhat confusing and/or internally conflicted. An earlier subpart, section 1517.0301(a)(1), specifically authorizes "All uses permitted in the IH-2-1 zone." Thus, based on section 1517.0301(a)(1), a vocational school is permissible in the OMDD as a matter of right, because vocational schools are permitted in the IH-2-1 zone.

But even if section 1517.0301(a)(8)(A) applied, it would still allow a vocational school in the OMDD. Section (8)(A) allows a trade school to operate that instructs in subjects *related* to a use *permitted* in the Industrial Subdistrict. The Industrial Subdistrict allows for a wide variety of uses, including: (1) scientific research and development activities; (2) manufacturing plants requiring advance technology and skills; (3) facilities engaged in the production of experimental products; (4) general industrial uses (defined as "Establishments engaged in the . . . manufacturing . . . testing [or] servicing . . . of a wide range of products"); (4) storage warehouses; and (5) facilities involved in the wholesale distribution of various goods (including machinery, equipment, and supplies).[4] Thus, if the subjects taught at our vocational facility relate to *any* of these permissible uses, our facility is also permissible.

Our facility will instruct in a variety of subjects, all of which are related to permitted uses in the OMDD. For example, our facility will instruct on proper safety techniques for using the latest state-of-the-art personal weaponry. Because facilities engaged in researching and developing this weaponry are permitted in the OMDD, a vocational school instructing end users on how to properly employ these devices would also be permissible. Our facility will also instruct students on how to assemble and disassemble firearms. Because facilities engaged in the manufacturing of firearms and firearm components are permitted in the OMDD, a vocational school instructing individuals on how to assemble these items would also be permissible.

It should also be noted that a P.O.S.T.-certified police academy is located on the campus of Southwestern College, at 8100 Gigantic Street in Otay Mesa, less than a quarter mile from our facility.[5] Thus, not only has the city presumably permitted, on private property, a vocational school similar to ours, but this use (police academy) would also provide another practical relationship between the subjects taught at our facility (safe police techniques) and thus, be the grounds for permitted use in the OMDD. Finally, as noted above, because other defense-contracting or aerospace firms would clearly be permissible in the OMDD, a vocational school providing training and support services for the defense industry would also be permissible in the OMDD, and, I submit, a desired, complementary use.

As the above analysis shows, our vocational facility is permitted as a matter of right. It is thus properly located in the OMDD, under *several*, independent grounds.

Another issue raised by your staff was the propriety of Southwest Law Enforcement Training Enterprises being involved in the initial permit requests. This is a non-issue for two reasons. First, Blackwater Worldwide has been completely forthcoming in its dealings with San Diego officials.

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[4] *See* San Diego Municipal Code §§ 1517.0301(a)(2)(A), (2)(B), (2)(D), (3), (6)(A), (6)(B), etc.

[5] Southwestern College also apparently runs a nursing and fire vocational school.

Attachment VI

Every planner, every inspector, and every official has known they were dealing with Blackwater, because throughout the process, all individuals working on the project personally identified themselves to city staff as representing Blackwater. As a result, the city has been aware, for quite some time, that Blackwater wished to locate a facility in Otay Mesa. As a matter of fact, the business permit issued to Blackwater in connection with this project not only makes clear that Blackwater is the entity that will do business at the Otay Mesa facility, but it also lists my home address. There has been no deception here.

Secondly, as you know, it is permissible for a variety of entities to be involved in the permitting process for a project.[6] Southwest Law Enforcement is a respected law-enforcement-training partnership, which was lawfully formed in the state of California and can legally do business in the state. During the early stages of this project, Blackwater Worldwide was considering partnering with Southwest Law Enforcement to take advantage of its expertise.[7] Instead, we could not come to mutually agreeable contractual terms, and decided to proceed with the project without Southwest. This is no different from three or four developers or contractors being involved with the early stages of a project. As contractors come and go, so do business relationships. Neither affects the validity of the permits, which as you know, relate to a location, not an individual.

In sum, Blackwater has been completely forthcoming during this entire process, from the outset through the present time, even opening up our business to the city's internal auditors (whose jurisdiction is limited to examining the city's internal finances) – an extraordinary gesture under the circumstances.

The final concern raised by your auditors was whether we possessed a permit for the shipping containers on the property that will be used to simulate a navy ship. From our conversations with San Diego Development Services, it appears your auditors misunderstand the usage of the movable shipping containers and the applicable regulations. In any event, our contractor is working steadfastly with Development Services staff to confirm that their approvals of the use were valid and properly issued.

Again, I want to thank you and the Mayor for your interest in our facility. San Diego has traditionally been a city very supportive of our men and women in the armed forces, and as the Navy itself has noted, Blackwater provides indispensable, "highly specialized" training of our "Sailors and Marines [when] no active duty personnel possess[] the requisite experience."[8] We thank you for the opportunity to enable us to provide this training, critical to national security, in the City of San Diego, while following all applicable local rules and regulations.

Very truly yours,

Brian Bonfiglio
Vice-President, Western Operations
Blackwater Worldwide

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[6] San Diego Municipal Code §§ 112.0102(a)(3); 113.0103.

[7] Contrary to earlier erroneous reports, Southwest Law Enforcement is an independent entity with which Blackwater entered arm's-length commercial negotiations. There is no common management or ownership.

[8] Letter from Rear Admiral M. Flanders to Ms. Barbara Simmons (Jul. 31, 2007).

Attachment VII

MAYER • BROWN

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May 19, 2008

Mayor Jerry Sanders
City Administration Building
11th Floor, 202 C Street
San Diego, CA 92101

Dear Mayor Sanders:

This past Friday, City Attorney Aguirre issued a memorandum to the Mayor and Members of the City Council. The memo, which indicates that it was prepared in response to your request for an investigation, purports to analyze certain legal issues relevant to the permitting of the training facility to be operated by our client, Blackwater Worldwide, in Otay Mesa. Based on that analysis, which proceeds on incorrect factual assumptions and reaches faulty legal conclusions, the memorandum recommends that action be taken to prevent the facility from operating.

Certain media reports discussing the City Attorney's memorandum also indicated that, in apparent reliance on the City Attorney's memorandum, the City may be considering imminent action with respect to the facility and its permits. To our understanding, your administration has been conducting its own review of the permitting process with respect to the Otay Mesa facility, with an initial report on the matter not due until May 23. As such, it may well be the case that the media reports of imminent action on your administration's behalf, be it in reliance on the City Attorney's memorandum or otherwise, are inaccurate.

To the extent your administration is considering such action, and particularly to the extent your administration is relying on the City Attorney's memorandum, we felt it important to apprise you and your administration of the correct facts and proper legal analysis. In doing so, we hope to prevent action taken in error that might irreparably harm Blackwater.[1]

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[1] Although the City Attorney did not contact Blackwater for information pertaining to its permits, the memorandum's concludes by stating that the "Office is open to considering additional information or facts as they become known; at such time, additional legal analysis may be appropriate." Given the City Attorney's apparent willingness to consider additional information, we are copying the City Attorney on this letter.

Attachment VII

For starters, the memorandum states that because Blackwater will train members of the U. S. Navy on the proper use of firearms at the facility, the San Diego Municipal Code (SDMC) requires a special approval by the city council. This is incorrect.

SDMC section 53.10 governs the discharge of firearms within the city. As the memorandum noted, section 53.10 generally prohibits the use of firearms and allows the city council to issue permits for the same under "conditions as it deems proper." However, SDMC section 53.10(d) clearly permits the discharge of firearms, without discretionary council approval or CEQA review, if the firearms are discharged at a facility instructing on the proper use of firearms and allowing individuals to engage in target practice. Such facilities are called "target ranges."[2] Section 53.10(d) reads: "**Exceptions: This section does not apply to . . . target ranges.**"

By exempting from special approval processes the places where San Diegans (and in this case, the men and women of the U.S. Navy) may practice gun safety and gun accuracy, the Municipal Code is consistent with the public policy of the State of California, which similarly exempts target ranges from even the strictest of gun laws. *See* Cal. Pen. Code § 12026.2(a)(9) (exempting people traveling to target ranges from California's concealed weapon ban); Cal. Pen. Code § 12027(f) (exempting members of target ranges, whether public or private, from other concealed weapons restrictions); Cal. Pen. Code § 12031(b)(5) (exempting individuals at target ranges from being charged with felony for carrying a loaded weapon); Cal. Pen. Code § 12070(b)(9) (exempting target ranges that loan guns to individuals from California gun-transfer laws); Cal. Pen. Code § 12073(b)(7) (exempting target ranges from certain recordkeeping requirements); Cal. Pen. Code § 12280(k)(1)(C)(i) (exempting target ranges from California assault weapons ban); Cal. Pen. Code § 12285(c)(3) (exempting individuals at target ranges from certain assault weapon registration requirements); and Cal. Civ. Code § 3482.1 (exempting compliant shooting ranges from nuisance liability).

Taken together, these provisions, along with SDMC section 53.10(d), make very clear that it is the policy of the State of California and the City of San Diego to exempt target ranges from even the most onerous of gun restrictions, to encourage learning about the safe operation of firearms. Consequently, it is inaccurate to claim that the target range component of Blackwater's training facility will require council approval or CEQA review.

The memorandum also states that a law enforcement or security training operation does not "clearly qualify" as a permitted use in Otay Mesa.[3] This again is incorrect, as vocational facilities are permitted in Otay Mesa, as a matter of right, under two distinct provisions of the Municipal Code. SDMC section 1517.0301(a)(1) specifically authorizes "All uses permitted in the IH-2-1 zone." It further exempts facilities permitted in the IH-2-1 zone from obtaining any special permits, including an Otay Mesa Development Permit. Vocational schools are permitted in the IH-2-1 zone, under SDMC section 131.0622, Table 131-06B. Thus, because Blackwater's facility, a vocational school, would be permitted in the IH-2-1 zone as a matter of right, it is similarly permissible, as a matter of right, in Otay Mesa.

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[2] While the SDMC does not define "target range," the dictionary defines "target range" as "a practice range for target practice," a synonym for "firing range." *See* http://wordnet.princeton.edu/perl/webwn?s=target%20range (last accessed May 18, 2008).

[3] City Attorney Memorandum, page 3.

SDMC section 1517.0301(a)(8)(A) provides additional authority that a vocational school is permissible in Otay Mesa. That section allows a trade school to operate that instructs in subjects *related* to a use *permitted* in the Industrial Subdistrict. The Industrial Subdistrict allows for a wide variety of uses, including: (1) scientific research and development activities; (2) manufacturing plants requiring advance technology and skills; (3) facilities engaged in the production of experimental products; (4) general industrial uses (defined as "Establishments engaged in the . . . manufacturing . . . testing [or] servicing . . . of a wide range of products"); (4) storage warehouses; and (5) facilities involved in the wholesale distribution of various goods (including machinery, equipment, and supplies). *See* San Diego Municipal Code §§ 1517.0301(a)(2)(A), (2)(B), (2)(D), (3), (6)(A), (6)(B), *et seq.* Thus, if the subjects taught at Blackwater's vocational facility relate to *any* of these permissible uses, it is also permissible.

Blackwater's facility will instruct in a variety of subjects, all of which are related to permitted uses in the Otay Mesa Industrial Subdistrict. For example, Blackwater's facility will instruct on proper safety techniques for using the latest state-of-the-art personal weaponry. Because facilities engaged in researching and developing this weaponry are permitted in the subdistrict, a vocational school instructing end users on how to properly employ these devices would also be permissible. Blackwater's facility will also instruct students on how to assemble and disassemble firearms. Because facilities engaged in the manufacturing of firearms and firearm components are permitted in the subdistrict, a vocational school instructing individuals on how to assemble these items would also be permissible.

One final issue on this subject is worth discussing. The memorandum questions whether the Blackwater facility is indeed a "vocational school."[4] Yet, on page two, the memorandum recognizes that the facility will be a "law enforcement/security training facility." The facility will clearly be a "vocational school," as that term is commonly understood. While the San Diego Municipal Code does not define "vocational school," the dictionary defines it as "a school offering instruction in one or more skilled or semiskilled trades or occupations"[5] There should be no doubt that a facility offering specialized training to the men and women of the U.S. Navy

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[4] *Id.*

[5] *See* http://dictionary.reference.com/browse/vocational%20school (last accessed May 18, 2008).

Attachment VII

would qualify as a vocational school. To state otherwise is to demean the occupational choice of the men and women who chose serving our country in the military as their occupation.[6]

In sum, the Blackwater facility is clearly a vocational school. Vocational schools are permitted in Otay Mesa – as a matter of right with no need for discretionary or CEQA review – under two separate provisions of the Municipal Code. In fact, a P.O.S.T-certified[7] police academy is located on the campus of Southwestern College, at 8100 Gigantic Street in Otay Mesa, less than a quarter mile from Blackwater's facility. There can be no doubt that the Blackwater facility is properly located within Otay Mesa, and that the city's ministerial review process correctly resulted in the issuance of permits for the facility.[8]

Blackwater Worldwide is keenly aware that this is an election year, but asks that politics stay out of the permitting process. Blackwater has been completely forthcoming with every city inspector and every city official. Just three weeks ago, on April 29, we met with the Chief Building Official, Afsaneh Ahmadi, at the Development Services headquarters. At that meeting, Ms. Ahmadi closely reviewed all of Blackwater's plans and permit applications, and the next day, approved all permits. On May 12, Blackwater opened the facility to the city's Internal Auditor, an extraordinary step considering municipal finances have not been (and to our knowledge are not) an issue here.

Throughout the permitting process, Blackwater has collaborated with city officials to make sure it proceeded lawfully and openly. As a result, we know Blackwater's permits are proper, and we trust that with this letter, we have cleared up the factual or legal misconceptions concerning the facility contained in the City Attorney's memorandum. We also trust that no actions will be taken by your office or administration based on the City Attorney's memorandum.[9]

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[6] As the memorandum also noted, the facility also has the capability to instruct members of law enforcement and those wanting a career in security. This should also remove any doubt that the facility is a vocational school, as surely law enforcement is a vocation; law-enforcement techniques are not typically taught at conventional universities.

[7] P.O.S.T. stands for Peace Officer Standards and Training. P.O.S.T. certification means a facility follows the standards and training courses outlined by the state of California for the training of peace officers.

[8] There also appears to be a misconception in the memorandum that a facility must be *either* a "target range" *or* a "vocational school." But those terms address different concepts in the statutory scheme. A "vocational facility" is a zoning "use." *See, e.g.,* SDMC section 131.0622. Other such permitted uses, for example, include universities or sports arenas, and others listed in the zoning ordinance. *See, e.g.,* SDMC §§ 131.0112(a), 131.0622. A "target range" on the other hand, is not a "use" and the code does not define it as such. Indeed, a "target range" is a component or feature of other uses, because a "target range" can be on the campus of a university, within a sports club, or part of the instruction taught at a vocational facility. Thus, a "vocational facility" can feature a "target range."

[9] We also note, at a minimum, before any action is taken on any of its permits, Blackwater would need to be provided formal notice of whatever "problems" allegedly were found, and an opportunity to be challenge those
(cont'd)

Attachment VII

As the Navy itself has noted, Blackwater provides indispensable, "highly specialized" training of our "Sailors and Marines [when] no active duty personnel possess[] the requisite experience."[10] San Diego has a proud history of being a city very supportive of our men and women in the U.S. Navy, and there is no good reason for San Diego to deprive them of training at this critical time. Blackwater Worldwide knows it will make the community proud by offering this training, vital to national security, in the City of San Diego.

We would be happy to provide the city additional information as necessary. Please do not hesitate to contact me with any questions.

Very truly yours,

John Nadolenco
Mayer Brown LLP

cc: City Attorney Michael Aguirre

Chief Building Official Afsaneh Ahmadi

Members of the City Council

(... cont'd)

findings "at a meaningful time and in a meaningful manner." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 2649 (2004) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' These essential constitutional promises may not be eroded." (internal quotes and citations omitted)).

[10] Letter from Rear Admiral M. Flanders to Ms. Barbara Simmons (Jul. 31, 2007).

Attachment VIII

Photograph of Ship Simulator at the Blackwater Facility

Attachment IX

Photograph of Blackwater Facility

Attachment X

THE CITY OF SAN DIEGO

June 3, 2008

Mr. Eduardo Luna, Internal Auditor
Office of the Auditor and Comptroller
600 B Street, Suite 1440
San Diego, CA 92101

Dear Mr. Luna,

Subject: Audit of Permits Issued for the Blackwater Facility

In response to your review of the above noted matter, the Development Services Department has the following responses:

Recommendation No. 1 – DSD should ensure permits are not approved unless the permit application includes all required information (i.e. "Property Owner or Lessee Tenant" and "Proposed Use"). Applicants should not be allowed to leave sections of the application blank.

Response: The Department agrees with this recommendation and will reinforce this with employees that accept permit applications.

Recommendation No. 2 – The City's Chief Building Official and City Attorney should review the additional information provided in the attachment of this report to determine the correct course of action regarding the permits issued for the facility located at 7685 SiempreViva Road.

Response: The Department agrees with this recommendation.

Recommendation No. 3 – DSD should implement a process for reviewing and approving projects that may be subject to interpretation or the Municipal Code may not clearly define the use.

Response: The Department has several formal processes for employees to use to evaluate interpretations of the code. They can work directly with their supervisors. They can take interpretations before their senior line supervisor meetings. Staff can also bring items before the Department's Policy Team (Management Team and key technical staff). Where the code is not clear, they can bring proposed code amendments to the Department's Code Update team. Each of these options provide staff with ways to validate their decisions and, where necessary, their interpretations. The Department will reinforce these formal processes with staff.

Attachment X

Recommendation No. 4 – The City should add regulations for law enforcement and security training facilities in the Municipal Code.

Response: The Department will bring this recommendation to the Code Update team and to the outside advisory group, the Code Monitoring Team (created by the Land Use and Housing Committee) for their consideration.

Recommendation No. 5 – DSD should clarify whether a Certificate of Occupancy was issued for the building. If not, Development Services Code Enforcement should not allow any of the building to be occupied until the certificate is issued.

Response: The Department agrees with this recommendation.

Recommendation No. 6 – DSD should notify Blackwater in writing that training may not be conducted in any areas for which City permits have not been issued.

Response: The Department has already notified Blackwater. See Attached.

Recommendation No. 7 – DSD should determine the appropriate actions to be taken regarding the ship simulator structure that was built without and approved permit.

Response: The ship simulator structure was shown on one set of plans that the Department reviewed but it was identified as a future facility. No permits had been obtained. Upon the Department's learning of the existence of the structure, Blackwater was immediately notified of the requirement to obtain permits for the structure prior to using it. Blackwater has submitted an application for a permit and staff is reviewing their application.

Recommendation No. 8 – DSD should take additional steps to locate missing records and review controls over records retention to ensure they are adequate.

Response: The Department's record management and control is being reviewed through the Mayor's Business Process Reengineering program. The Department is also coordinating record management and controls with the City Clerks Business Process Reengineering efforts since both departments have overlapping responsibilities.

Thank you for the opportunity to respond to your audit's recommendations.

Sincerely,

Kelly Broughton, Director,
Development Services Department

Attachment

Attachment X

THE CITY OF SAN DIEGO

May 19, 2008

Mr. Brian Bonfiglio
Vice President
Blackwater Worldwide
PO Box 710897
San Diego, CA 92171-0897

Subject: 7685 Siempre Viva Road, Raven Development Group

Dear Mr. Bonfiglio,

The City will not issue a certificate of occupancy for the above referenced project pursuant to Section 129.0114 of the San Diego Municipal Code (SDMC). The portions of the building identified for use as a shooting range and vocational/trade school shall not be occupied until a certificate of occupancy has been issued for this change of use or occupancy pursuant to SDMC Section 129.0113.

As outlined in the attached opinion from the City Attorney's office, no certificate of occupancy will be issued until the appropriate discretionary processes associated with the use of firearms in city limits and determination of use for the vocational/trade school by the Planning Commission has been completed. Since Planning Commission and City's Council's actions will be considered discretionary, these actions are subject to review under the California Environmental Quality Act (CEQA).

As the majority of the structure is still identified for warehouse uses, no other uses are permitted until a submission for a request of change in occupancy has been made and approved by the Development Services Department.

Sincerely,

Kelly Broughton, Director
Development Services Department

Cc: Jay Goldstone, Chief Operating Officer
Michael J. Aguirre, City Attorney
William Anderson, Executive Director of City Planning and Development
Afsaneh Ahmadi, Chief Building Official

[redacted]

From: Hoever, James CIV CENSECFOR [mailto:james.hoever@navy.mil]
Sent: Thursday, May 29, 2008 12:07 PM
To: Rob Baugh
Cc: Mcfarland, Larry A CIV CENSECFOR, N7; Christian, Fred T. CONT CENSECFOR; Murray, Miles M CIV TSC San Diego ,N01F; Mowell, Thomas A CDR CENSECFOR
Subject: Blackwater USA Navy Training Facility San Diego

Rob,

In reference to your new training facility in San Diego I recently had my subordinate, Mr. Fred Christian evaluate your facility along with a NETC Representative, Mr. Miles Murray. Your facility was evaluated as safe for the training of Navy Students and we are now simply going through the formality of getting an official letter of approval. Your facility will prove to be an invaluable asset in the training of Navy students!

The letter of approval will come from the Naval Education and Training Command and should be received within the next two weeks for your Range Facility and Ship Simulator Training Platforms.

If there are any questions do not hesitate to call and thank you for the efforts you put forth in the training of our sailors!!

V/R

Jim Hoever
Center for Security Forces Safety Manager]

EX. 2

THE CITY OF SAN DIEGO

Land Development Manual

Volume I, Chapter 1

Project Submittal Requirements

Section 1
Guide to Project Submittal Process

January 2008

Development and Permit Information: (619) 446-5000
Appointments: (619) 446-5300
www.sandiego.gov/development-services

Printed on Recycled Paper

This information, document, or portions thereof, will be made available in alternative formats upon request

EX. 3

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SECTION 1: GUIDE TO THE PROJECT SUBMITTAL PROCESS

IMPORTANT STEPS TO PROJECT APPROVAL

Following the basic steps listed below will assist you in completing your project submittal package and help lead you to a successful project approval. To assist you in determining the City of San Diego's planning, zoning, subdivision, and/or building regulations that apply to your project, a Parcel Information Checklist (DS-302) has been developed. The information on this checklist will be used at project submittal to determine the appropriate review for your proposed project. By evaluating this information prior to designing your project, you can avoid mistakes early in the process, save time, and reduce processing costs. The Parcel Information Checklist is required for all application submittals.

Important Note:
Other permits, approvals, and fees may be required from outside agencies that are not handled by the City of San Diego Development Services Department, e.g. school districts, public utilities, County Health. Contact the appropriate agency for information on their procedures.

1. **Determine the zoning designation of your property.**
Zoning is the legislative method by which land use, intensity of development, and site design and architectural design are controlled. Some zones apply to all or many parts of the City while other zones, such as those within Planned Districts, apply only to very specific sections of the City. Another type of zoning, called Overlay Zones add special regulations to the underlying zone. The first step in determining the zoning regulations that apply to your property is to find your site on the Official Zoning Maps, available through our Website at: http://www.sandiego.gov/development-services.

Land Development Manual Project Submittal Requirements

Section 1	**Guide to the Project Submittal Process**
Section 2	Construction Permits – Structures
Section 2A	Single Dwelling Unit/Duplex and Accessory Structures
Section 3	Construction Permits - Grading and Public Right-of-Way
Section 4	Development Permits/Approvals
Section 5	Subdivision Approvals
Section 6	Policy Approvals

The Official Zoning Maps were adopted by Council on February 28, 2006 and currently only represent base zone information. In the future, it is intended the maps will also provide overlay zone and Planned District information. Until then it is recommended you request conformation of your zoning using one of the methods listed below.

Base zones govern the uses permitted and the development regulations of the site. Once you have determined the base zone, refer to Land Development Code Chapter 13, Article 1, Divisions 1-6 for your property development regulations. If your zone is in a Planned District, refer to Land Development Code Chapter 10, Article 3, Divisions 1-22, and Chapter 15.

A Planned District is a legally described geographic area which has been designated by the City Council and adopts different development controls than city-wide base zones.

If your proposed project site is within an overlay zone, it may add special regulations to the regulations of the base zone, and may also affect the type of permit/approval required. Chapter 13, Article 2, Division 1-11 of the Land Development Code provide information on each of the overlay zones.

Development and Permit Information staff, located on the 3rd floor of the Development Services Center, can assist you in obtaining the zoning information for a particular parcel. You will need to provide the project address (if available), legal description or Assessor's Parcel Number. You may request zoning information by:

- Phoning the Development Services Department general information line at (619) 446-5000.
- In person, by visiting Development and Permit Information staff on the third floor of the Development Service Center. Appointments are recommended. Call (619) 446-5300 for an appointment.
- Fax by completing Part 1 of the Development and Permit Information Customer Request form (DS-5715) or Zoning Information by Fax (DS-1801).

2. Determine what uses are allowed on your property.

After you have determined your zoning, refer to Municipal Code Chapter 13, Article 1, Divisions 1-6 to find the uses permitted in each zone. Divisions 2-6 contain use regulations tables that list the permitted uses for each zone, uses that are allowed with specified limitations, and uses that require a use permit. If your property is located within an overlay zone, you will also need to refer to Chapter 13, Article 2 to find any supplemental regulations. If your property is in a Planned District, refer to Chapter 10, Article 3, Divisions 1-22, and Chapter 15 for permitted uses.

3. Identify regulations governing the size and scale of development.

To find the basic development regulations that apply to your site, refer to the development regulations tables in Municipal Code Chapter 13, Article 1, Divisions 2-6. These regulations govern the size and scale of development and include requirements for lot size, setbacks, structure height and permitted density. Each division contains a development regulations table that lists the basic development regulations for each base zone. The tables also refer to other sections in the Municipal Code that contain additional regulations that are applicable in the base zone. If your property is in a Planned District refer to Chapter 10, Article 3, Divisions 1-22, and Chapter 15 for property development regulations.

4. Identify other development regulations that apply to your property.

Once you have found the use and development regulations for your base zone and any overlay zones, if applicable, look in Municipal Code Chapter 14 for additional city-wide, general development regulations that apply in all zones. All development is subject to the general development regulations in Chapter 14, Article 2, whether or not a permit or other approval is required. This article includes regulations for grading, drainage, fences, landscaping, parking, equipment screening, loading areas, outdoor storage, and signs. If the regulations require that you obtain a permit for certain types of development, an applicability table will refer you to the appropriate sections within each division for the type of construction or development permit needed.

5. Determine if your property contains Environmentally Sensitive Lands.

Environmentally Sensitive Lands include sensitive biological resources, steep hillsides, sensitive coastal bluffs, coastal beaches, and special flood hazard areas. If you are developing property that contains Environmentally Sensitive Lands, refer to Municipal Code Chapter 14, Article 3, Division 1 for the supplemental regulations.

If any portion of your property contains environmentally sensitive lands, you will be required to provide more information to assist City staff in determining the type of permit you will need. Development and Permit Information staff can assist you in determining if your property is identified on any of the resource maps, i.e., sensitive vegetation, 25% slopes, sensitive coastal resources, or special flood hazard areas. Call (619) 446-5300 for a Development and Permit Information appointment.

If your property contains environmentally sensitive lands and you do not qualify for exemption pursuant to Municipal Code Section 143.0110(c), you will need to obtain either a Neighborhood Development Permit or a Site Development Permit. To determine which type of permit you need refer to Table 143-01A Applicability of Environmentally Sensitive Lands Regulations in Municipal Code Section 143.0110.

If you can qualify for an exemption pursuant to Municipal Code Section 143.0110(c), you will not be required to obtain either a Neighborhood or Site Development Permit. If the exemption you qualify for is 143.0110(c) (1), you will be required to provide a statement on the site or grading plan signed by the property owner acknowledging that "the development activity will not encroach into the environmentally sensitive lands during or after construction and that further development on the property is not permitted unless the development is reviewed and approved pursuant to Chapter 14, Article 1, Division 1 of the Municipal Code."

6. Determine if your property contains historical resources.

City Staff must determine if your proposed project site contains one or more elements of a historical resource and then further if a site-specific survey is required to properly evaluate the resource(s). A Historical Resource may be in the form of buildings, structures, objects, archaeological sites, historical districts, historical landscapes, and traditional cultural properties. Municipal Code Section 143.0212, together with the Environmental Review Process under the California Environmental Quality Act (CEQA) requires a review for these resources. If your project site is identified on the Historical Resource Sensitivity Maps and involves site grading or proposes the demolition or external alteration of a structure that is 45 or more years old, then your project is subject to this review and additional submittal information will be requested. To determine the year the structure(s) were built, see the Records Section, 2nd Floor Development Services Center, 1222 First Avenue, or call (619) 446-5200.

Historical Resource Determination is made based on the three steps as follows:

a. Step 1 - Initial Determination

Determination of a need for a site-specific survey is made by staff based upon the required Parcel Information Checklist submitted as part of the General Application Package. If the development area is on the Historical Resource Sensitivity Maps and is proposing soil excavation, or if the project proposes external alteration of a structure that is 45 years or more old, go to Step 2.

b. Step 2 – More Information Required (if required by Step 1)
Based on photographs of the site and each building façade, records of building permits or sewer and water permits, and the Building Record from the County of San Diego Assessor's Office, City staff will determine if a site specific survey is required. In addition, if your site involves soil excavation and is on the Historical Resource Sensitivity Maps then staff may (if the site is on or directly adjacent to a known archeological site) require as-built grading plans or a topographic survey of the existing site and a photographic site survey that includes photographs taken from the project boundaries at four or more locations to evaluate for impacts to archaeological resources

c. Step 3 – Site Specific Survey
Based on the information submitted at Step 2 and review of in-house research materials, City staff will determine if a site-specific survey is required. When a site-specific survey is required, it shall be conducted in such a manner as to determine the presence or absence of potential historical resources consistent with Chapter III of the Historical Resources Guidelines of the Land Development Manual. Additional submittal requirements may be identified as part of the site-specific survey process. If potential historical resources are identified, then the proposed project is referred to the Historical resources Board for possible designation.

7. Geologic Hazard Category and Earthquake Fault Buffer

The Geologic Hazard Category of the site identifies the type of geotechnical study that may be required. This study may identify considerations that must be included in the proposed development. Information on the required geotechnical report for construction permits can be found in Municipal Code Section 145.0203; the required geotechnical study for Development Permits, Subdivision Approvals and Grading Permits is identified in Information Bulletin 515.

Earthquake Fault Buffers are designated corridors on either side of known fault lines. These corridor widths vary from 100 feet from either side of the fault in Geologic Hazard Zone 12 and 450-800 feet from either side of the fault in Geologic Hazard Zone 11. Developments that lie within these buffer zones are subject to various State and City regulations that could_impact the feasibility of a proposed project. Information on the fault lines and their associated buffers can be obtained from the City of San Diego, Seismic Safety Map published in 1995. These maps are located in the Development Services Center, Customer Self-Help Area, 1222 First Avenue, 3rd Floor.

8. Identify Model Code Requirements.

Model Codes are adopted by the City of San Diego to safeguard life, health, property and public welfare. The provisions of these codes apply to the construction, alteration, moving, removal, demolition, repair, conversion, maintenance and use of all buildings or structures in the City of San Diego. The model codes used by the City of San Diego are: the California Building Code, California Mechanical Code, California Plumbing Code, California Fire Code, California Electrical Code and the State of California Energy Conservation requirements (Title 24). Early identification of the requirements during the conceptual design state may save delays during final construction permit stages.

9. Determine the type of permit/approval review

The Municipal Code establishes four categories of permit/approval types: Construction Permits, Development Permits/Approval, Subdivision Approvals, and Policy Approvals. Before proceeding with a Construction permit application, it is important that you verify if a Development Permit, Subdivision Approval, or Policy Approval is required for your proposed development. These approvals must be obtained before a construction permit may be issued.

Refer to the Permit/Approval Table on page 11 for a complete listing of all the permit/approval types identified in the Municipal Code.

- **Construction Permits:** Construction permit review is a review of final or construction plans which include building, grading, and public right-of-way permits. The decision maker's review is administrative or ministerial – the permit is approved if the regulations are met or denied if the regulations are not met. There is no public hearing or public noticing of these projects.

- **Development Permits/Approvals:** Development permit review is a review of architectural and site design plans. The decision maker must exercise some discretion in determining whether the proposed development meets the applicable regulations, standards, and guidelines. A public hearing is required for projects subject to development review where the appropriate decision maker decides on the project. If a Development Permit/Approval is required, it must be approved before a Construction Permit can be issued.

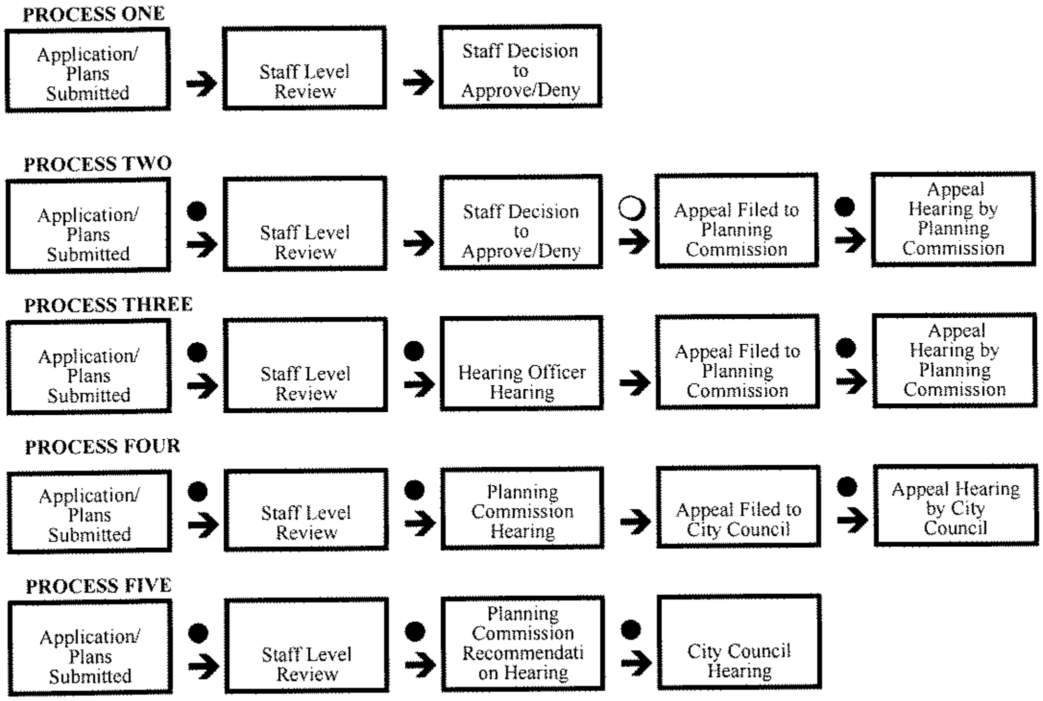
- **Subdivision Approvals:** Subdivision approvals regulate the division of lands and the associated design of improvements, and the acquisition and vacation of public rights-of-way and public easements with the City. Some subdivision approvals are administrative and do not require a public hearing. Some are discretionary and require a public hearing.

- **Policy Approvals:** Policy approvals involve requests to amend existing City policies such as changing the zoning designation of a site or amending a community plan. These types of approvals require a public hearing.

10. Determine the Decision Process.

Applications for permits, maps, and other approvals are reviewed through one of the five decision processes depicted in the Decision Processes and Notices diagram. The zoning, conditions of the site and proposed project determines the process that is followed for each application. For more information on these processes, refer to Municipal Code Chapter 11, Article 2. If more than one type of decision process is required for your project, then the decisions are consolidated (except for Process One decisions) and taken to the highest decision level (per Municipal Code Section 112.0103).

Decision Processes and Notices


PROCESS ONE
Application/ Plans Submitted
Staff Level Review
Staff Decision to Approve/Deny
PROCESS TWO
Application/ Plans Submitted
Staff Level Review
Staff Decision to Approve/Deny
Appeal Filed to Planning Commission
Appeal Hearing by Planning Commission
PROCESS THREE
Application/ Plans Submitted
Staff Level Review
Hearing Officer Hearing
Appeal Filed to Planning Commission
Appeal Hearing by Planning Commission
PROCESS FOUR
Application/ Plans Submitted
Staff Level Review
Planning Commission Hearing
Appeal Filed to City Council
Appeal Hearing by City Council
PROCESS FIVE
Application/ Plans Submitted
Staff Level Review
Planning Commission Recommendati on Hearing
City Council Hearing

Key

● Public Notice to Property Owners and Tenants within 300 Feet and to Community Planning Groups

○ "Limited" Notice to Applicant and Anyone Requesting Notice

Typically, projects that fall under Process One, Two or Three take less time and cost less money than projects that fall under Process Four or Process Five. Applicants should be familiar with thresholds in the development regulations that determine the decision processes. If you can design your project to fall under one of the lower decision processes, it could save substantial time and money in the review and approval process.

11. Determine the Review Process.
Most projects are required to be submitted into plan review. There are some minor projects, however, that can be reviewed over-the-counter, by appointment. Some of the more common minor projects include:

a. Construction permits for single-story, single-dwelling unit additions. (See Information Bulletin 140, "How to Obtain a Permit to Build a Residential Addition" and accessory structures for single-dwelling units [carports, patio covers, fences, retaining walls using City of San Diego standard designs, etc.])

b. Construction permits for minor interior remodels for commercial tenant improvements. (See Information Bulletin 147, "How to Obtain Permits for Commercial Tenant Improvements.")

c. Standard public improvements as identified on Information Bulletin 165, "How to Obtain a Public Right-of-Way Permit for Standard Public Improvements."

For clarification on which projects can be reviewed over-the-counter, make an appointment with Development and Permit Information at (619) 446-5300.

12. Determine the Project Submittal Requirements and Schedule Your Submittal Appointment.

Using the information you have gathered to this point, refer to the applicable sections of this publication to determine the forms, documents, and plans that must be submitted for project review and approval.

Most approvals found in Sections 3-6 require a deposit account. The deposits shown on fee schedules 502, 503, and 504 are "initial" deposits. Additional deposit(s) will be required during the review process.

It is necessary to evaluate all projects being submitted to ensure that all of the required information is provided to review the project. This is known as the completeness review. In most cases the completeness review can be done while you wait. Once it is determined that your submittal is complete (including correct number of sets), you can pay your fees or deposits and your application is fully submitted.

Some projects (as identified in Sections 2-6 of the Project Submittal Requirements Manual) will need to go through a Submitted Completeness Review. The Submitted Completeness Review allows staff more time to review the plans/documents for the required detail, customize the number of copies needed, and set up the project for review. After the Submitted Completeness Review, staff will notify the applicant via fax, electronic mail, phone or US Mail whether the application is ready to be fully submitted or whether additional information or clarification is required.

Development approvals (also referred to as discretionary) always require a public noticing package. For complete information on a public noticing package see Information Bulletin 512. "How to Obtain Public Noticing Information."

Submittal appointments are recommended and can be made by phoning (619) 446-5300. Please describe your project in detail so that the correct type of appointment can be scheduled.

13. What happens next?

Plan Review

Once you have successfully submitted your application, plans, documents, etc., and have paid the required fees or deposits, City staff can begin their review. Your project will be assigned a Project Manager who will be your single point of contact for any questions you may have. The Project Manager will ensure that your plans are routed to appropriate City staff for review and comment. The review time could range anywhere from two to four weeks or longer, depending on the complexity of your project.

As each reviewing discipline has completed their review, they will route the plans, their issues (if not approved), and a "Submittal Requirements" report (if required to resubmit) to our Plan Pick-up area on the third floor of the Development Services Center. The point of contact for the project will then be notified by US Mail, electronic mail, or fax (depending upon the preferred method of communication provided at the time of submittal) that your plans are ready to be picked up. If you have been assigned a Development Project Manager to actively manage your project, they will evaluate the comments received from the various reviews and forward you a project status letter detailing any outstanding issues.

Environmental Review

As part of the review process for your project, it will be determined if your project is subject to environmental review. All development activities that are subject to Process Two, Three, Four, or Five Decisions require compliance with the California Environmental Quality Act (CEQA), i.e., discretionary review triggers CEQA. The purpose of CEQA is to provide accurate, objective, timely, and orderly evaluation and disclosure of potential environmental impacts of proposed projects to the decision makers (Hearing Officer, Planning Commission or City Council). The application for a development permit also serves as the application for environmental review. First, the environmental staff will identify if a CEQA exemption can be granted. If not, an environmental initial study will be conducted to identify any potential environmental issues that may be associated with the project and to determine what type of environmental document will need to be prepared. For more information, please refer to Municipal Code Chapter 12, Article 8, Divisions 1-3.

Infrastructure Requirements Identified

As part of the review process and based on the scope and details of your project, City staff will determine the infrastructure improvements (i.e., sidewalk, street or alley improvements, bus stops, pedestrian ramps, etc.) that may be required for your project. Fronting public improvements are required to be brought up to current City standards or to mitigate impacts of the new development in accordance with Chapter 14, Article 2, Division 6 of the Municipal Code and Council Policies 600-02, 600-03, 600-04 and 600-10.

Permit Issuance

Construction permits can be issued once the project has been signed off by all required review disciplines. You will receive an Inspection Record card at the time of permit issuance. The Field Inspector signs this card as the construction is inspected and approved.

Development permits and other approvals requiring a public hearing cannot be issued until the hearing body approves the project, all rights of appeal have been exhausted, and the permit is recorded in the Office of the County Recorder as set forth in Section 126.0106 of the Municipal Code. At this point, you can proceed with the construction permit stage.

If you have any questions regarding the regulations contained in the Municipal Code, the Land Development Manual, or the Submittal Requirements Manual, you may contact Development and Permit Information by phone at (619) 446-5000 or you can make an appointment by phoning (619) 446-5300 to obtain the information in person on the third floor of the Development Services Center, 1222 First Avenue.

A wide variety of helpful information on development regulations can also be obtained on line at the City of San Diego Website: http://www.sandiego.gov/development-services. Development regulations, fee schedules, submittal requirements, and forms are all conveniently located on line.

OPTIONAL PROJECT REVIEW SERVICES

The optional review services below are offered to save you time in the plan preparation process. These services offer an opportunity for you to submit limited information and get preliminary feedback from staff regarding a potential project or modification to an already approved project. This can be done prior to formal submittal for a required approval, allowing you to determine how you would like to proceed in processing your project with the City.

Preliminary Review

Preliminary review helps you obtain the answers that you need to determine the feasibility of your development project and to be successful in submitting the project for City review.

Preliminary Review is an optional, fee-based service. (See Information Bulletin 503 for Preliminary Review Fees.) This service is offered prior to your formal submittal to the City for required permits and review. For complete information on the preliminary review service and for the Preliminary Review Questionnaire, see Information Bulletin 513, "Preliminary Review."

Substantial Conformance Review

Substantial Conformance Review is a service available to customers who are proposing to modify their projects after a discretionary permit has been approved by the City. If the only prior discretionary action, however, was a tentative map or vesting tentative map, and a final map for the project has been approved, then this service is not available.

The goal of substantial conformance review is to determine if the change proposed for a project is consistent and in conformance with the previously approved permit. This service is offered to allow customers to provide only the information needed to make a conformance determination, without having to go to the expense of preparing complete construction documents. The process does not include a review for conformance with other City regulations, which is performed when an application for a construction permit approval such as a building, grading, or public improvement permit is made.

Instead of Substantial Conformance Review, customers may choose to include their project changes as part of a complete construction permit application (building permit, grading permit, public improvement permit, etc.). Staff will review the project change for conformance with the prior permit as part of the process of checking the plans against applicable regulations. If the project changes are not deemed to be in conformance with the previously approved discretionary permit, minor to significant project redesign or an amendment to the previously approved permit may be required. The applicant makes the choice to risk a full construction permit submittal, or to opt for the more tailored Substantial Conformance Review service,

Substantial conformance review in most cases is a deposit-based service. (See Information Bulletin 503 for Substantial Conformance Review Fees.) This service is offered prior to your formal submittal to the City for required construction permits. For complete information on Substantial Conformance Review, see Information Bulletin 500, "Substantial Conformance Review."

Public Project Assessment

This optional service is intended to assist public project applicants in determining required permits and approvals and to provide an environmental assessment of the project. Public projects are defined as a project originated by a City department or lessee or a project located on City-owned property. Many public projects require a City Council or City Manager action that subjects the project to the California Environmental Quality Act (CEQA) review process. The Assessment of Public Projects is a vehicle to assist the applicant in obtaining information on any necessary permits and required CEQA documentation. For complete information on the Public Project Assessment service, see Information Bulletin 510, "Assessment of Public Projects."

PROJECT SUBMITTAL REQUIREMENTS

Once you have identified all the applicable regulations and have designed your project accordingly, you are ready to prepare your submittal package. The table below provides a listing of all permit/approval types, the corresponding Municipal Code section that will tell you when that type of permit/approval is required, and which sections of this manual contain the information you will need to submit your project. For example, if you are applying for a building permit you would reference Municipal Code Section 129.0202 to find out when a building permit is required. You would then turn to Section 2 of this manual, titled Construction Permits – Structures, to find out which items you need to submit.

You can use the Submittal Matrices and the Minimum Submittal Requirements Checklists found in each section to identify the forms, documents, and plans that are required for certain types of permits and approvals. The Submittal Matrices are easy-to-use tools to help you quickly identify the number of items you need to submit to the City. The Submittal Requirements Checklists provide a detailed description of what the content of each of the required forms, documents, and plans must be. You can also refer to the Information Bulletins referenced in the Submittal Matrices that provide further information. If you still have questions regarding why you need to submit a certain item, you can obtain a pre-submittal appointment by phoning (619) 446-5300 or request a Preliminary Review. Keep in mind that the completeness of your submittal package will help the reviewing disciplines expedite the processing of your application.

Permit/Approval Table

Permit/Approval	When is it required? (Code Section)	Decision Level	Submittal Manual Section
Amendments to Development Permits and Tentative Maps	126.0113	Process 2, 3, 4, or 5	Section 4
Building Permit	129.0202	Process 1	Section 2 and Section 2A
Certificate of Compliance	125.0210	Process 1	Section 5
Certificate of Correction	125.0140	Process 1	Section 5
Coastal Development Permit	126.0702	Process 2 or 3	Section 4
Conditional Use Permit	126.0303	Process 3, 4, or 5	Section 4
Dedication of Right-of-Way	144.0203	Process 1	Section 5
Demolition/Removal Permit	129.0502	Process 1	See Information Bulletin 710, "Permit Instructions, Procedures for Building Demolition/Removal"
Designation of Historic Resource	123.0202	Process 4 (modified)	Section 6
Development Agreements	124.0102	Process 5 (modified)	Section 6
Easement Abandonments	125.1010	Process 5	Section 5
Electrical Permit	129.0302	Process 1	Section 2
Encroachments within Public Right-of-Way	129.0715	Process 1,2 or 4	See Information Bulletin 576 "How to Obtain a Permit for Encroachments within the Public Right-of-Way"
Extension of Time	126.0111	Process 3, 4 or 5	Section 4

Permit/Approval	When is it required? (Code Section)	Decision Level	Submittal Manual Section
Final Map	125.0610	Process 1	Section 5
Grading Permit	129.0602	Process 1	Section 3
Land Use Plan/Local Coastal Program Amendment	122.0106	Process 5	Section 6
Limited Uses	122.0302	Process 1	Section 2
Lot Line Adjustment	125.0310	Process 1	Section 5
Map Waiver	125.0120	Process 3	Section 4
Neighborhood Development Permit	126.0402	Process 2	Section 4
Neighborhood Use Permit	126.0203	Process 2	Section 4
Parcel Map	125.0501	Process 1	Section 5
Parking Lots (Building Permit) adding 4 or more parking spaces	142.0505, 142.0402	Process 1	Section 2
Planned Development Permit	126.0602	Process 3, 4, or 5	Section 4
Planned District Approvals (Site or Neighborhood Development Permit)	126.0402, 126.0502, 126.0602	Process 2 or 3	Section 4
Plumbing/Mechanical Permit	129.0402	Process 1	Section 2
Public Right-of-Way Permit	129.0702	Process 1	Section 3
Public Right-of-Way Vacation	125.0010	Process 5	Section 5
Reversion to Acreage	125.0810	Process 5	Section 5
Rezonings	123.0102	Process 5	Section 6
Sign Permit	129.0802	Process 1	See Information Bulletin 111, "General Procedures, Sign Plan Check to Permit Issuance."
Site Development Permit	126.0502	Process 3, 4, or 5	Section 4
Site Reconnaissance and Testing	143.0110	Process 1	See Information Bulletin 560, "How to Obtain a Grading Permit for Site Reconnaissance and Testing."
Site Restoration	142-0150	Process 1	Section 3
Street Name Change	Council Policy 600-12	Process 4 or 5 (modified)	Section 5
Substantial Conformance Review	126.0112	Process 2 in the Coastal Overlay Zone; Process 1 elsewhere	See Information Bulletin 500, "Substantial Conformance Review."
Subdivision Improvement Agreement	144.0401	Process 1	Section 3
Temporary Construction Permit	129.0117	Process 1	Section 2
Temporary Use Permit	123.0401	Process 1	Section 2
Tentative Map / Vesting Tentative Map	125.0410	Process 3, 4, or 5	Section 4
Variance	126.0802	Process 3	Section 4
Zoning Use Certificate	123.0302	Process 1	Section 2

Hopefully, you will find this information beneficial in processing your project through the Development Services Department's review and approval process.

Other Helpful Resources:

City Website: www.sandiego.gov

Land Development Code (Chapters 10-15): http://clerkdoc.sannet.gov/Website/mc/mc.html

Development and Permit Information: (619) 446-5000

Appointment Line: (619) 446-5300